

JOHN J. DUNSMORE ET AL.

IBLA 80-416

Decided December 17, 1980

Appeal from a decision of the Colorado State Office, Bureau of Land Management, declaring abandoned and void various mining claims. CMC 138505 through 138535.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment -- Mining Claims: Location -- Mining Claims: Recordation

Where a person locates mining claims on or before Oct. 21, 1976, the requirement of 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2(a) concerning claims located prior to the enactment of FLPMA apply, and the owner has until Oct. 22, 1979, to record the location notice with BLM.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment -- Mining Claims: Location -- Mining Claims: Recordation

Under 43 CFR 3833.4, the failure to file such instruments as required by subsection (a) and (b) of this section shall be deemed conclusively to constitute an abandonment of the mining claim, millsite, or tunnel site by the owner.

3. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment -- Mining Claims: Location -- Mining Claims: Recordation

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a mining claim is submitted to BLM for recordation on Oct. 22, 1979, and the check submitted was returned by the bank as uncollectible, the mining claims located prior to Oct. 21, 1976, are deemed abandoned and void.

APPEARANCES: John J. Dunsmore, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

John J. Dunsmore, Roger O. Miller, et al., hereinafter appellants, appeal from a January 23, 1980, decision of the Colorado State Office, Bureau of Land Management (BLM), declaring appellants' mining claims abandoned and void.

The claims in question were located on August 26, 1975. BLM received documents from appellants pertaining to unpatented mining claims identified as Lucky Jim #1 through #14, #20 through #23, and #25 through #37, accompanied by a check in the amount of \$155.

The check, numbered 853, dated October 22, 1979, from Circle of Light, Santa Fe, New Mexico, was signed by John J. Dunsmore and drawn on the First National Bank of Santa Fe, New Mexico. It was subsequently returned by the bank as uncollectible. As a result, BLM rejected the mining claims for recordation and returned the documents and check to appellants.

[1] Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), states: "(a) The owner of an unpatented lode or placer mining claim located prior to October 21, 1976, shall, within the three-year period following October 21, 1976, and prior to December 31 of each year thereafter, file the instruments required by paragraphs (1) and (2) of this subsection."

The applicable regulation, 43 CFR 3833.1-2(a), provides as follows:

The owner of an unpatented mining claim, mill site or tunnel site located on or before October 21, 1976, on Federal lands * * * shall file (file shall mean being received and date stamped by the proper BLM Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law.

Where a person locates a mining claim on or before October 21, 1976, the requirements of 43 CFR 3833.1-2(a) concerning claims located prior to the enactment of FLPMA apply and the person has until October 22, 1979, to record the location notice with BLM. H. L. Smith, 46 IBLA 62 (1980).

[2] Under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4, when the owner of an unpatented mining claim located prior to October 22, 1976, fails to file a location notice with BLM by October 22, 1979, his claim is deemed conclusively to be abandoned and to be null and void. H. L. Smith, supra. In these circumstances, the 90-day filing deadline set out in 43 CFR 3833.1-2(b), for claims located after the enactment of FLPMA, does not apply.

Appellant Dunsmore, in the statement of reasons, indicated that check #853 did not clear due to circumstances beyond his control. He does not, however, contend that it was dishonored because of a bank error, nor does he provide any details as to the circumstances to which he adverts. A new check was received by BLM on February 15, 1980, to replace the old check, accompanied by a request to refile the claims.

[3] The regulation upon which BLM relied and which is controlling herein is 43 CFR 3833.1-2(d): "Each claim or site filed shall be accompanied by a one time \$5 service fee which is not returnable. A notice or certificate of location shall not be accepted if it is not accompanied by the service fee and shall be returned to the owner."

In a recent decision, Joe B. Cashman, 43 IBLA 239 (1979), we construed that regulation, and noted that the tender of the service fee is mandatory. Failure to so tender requires rejection of the filing. Accord, Nevada Pacific Co., Inc., 46 IBLA 208 (1980); see also Topaz-Beryllium Co. v. United States, 479 F. Supp. 309 (D. Utah 1979). The same result must obtain where the check which is tendered is subsequently dishonored by the bank upon which it was drawn, absent a statement by the bank that its actions were erroneous. Thus, BLM correctly rejected these claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Bernard V. Parrette
Chief Administrative Judge

